

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 18-1689

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on January 7, 2019, on the Application of LS Futures, LLC, (Applicant). The Applicant is seeking a special exception to allow for the outdoor commercial parking and storage of boats on a property located at 1601 Marina Drive, Trappe, MD, 21673 in the Limited Commercial (LC) zone. The request is made in accordance with Chapter 190, Zoning, Article IV, §190-25 §190-29.22 and Article VII, §190-56 of *Talbot County Code* (the *Code*). The property owner is LS Futures, LLC, and the property is shown on Tax Map 62, Grid 19 Parcel 43.

Present at the hearing for the Board of Appeals were: Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; members Paul Shortall, Jr., John Sewell, and Louis Dorsey, Jr. Anne C. Ogletree served as attorney for the Board of Appeals. Brennan Tarleton, Planner I, and Miguel Salinas, Assistant Planning Officer were in attendance.

The Chairman inquired if all members had visited the site and received an affirmative response.

The following exhibits were offered and admitted into evidence as indicated:

- Exhibit 1. Application for Special Use Exception and attachment B;
- Exhibit 2. Copy of tax map with subject property highlighted in yellow;
- Exhibit 3. Notice of Public Hearing published in the Star Democrat;
- Exhibit 4. Newspaper Confirmation;
- Exhibit 5. Notice of Public Hearing & Adjacent Property Owners list;
- Exhibit 6. Standards for Special Exception with attachment C;
- Exhibit 7. Staff Report prepared by Elisa Deflaux, received 12/19/18;
- Exhibit 8. Planning Commission Comments;
- Exhibit 9. Sign Maintenance Agreement;
- Exhibit 10. Email forwarded to State Highway, no response, no comments;
- Exhibit 11. Authorization Letter from Cheryl Hughes dated 12/28/2018;
- Exhibit 12. Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 13. Aerial photo;
- Exhibit 14. Critical Area Lot Coverage Computation worksheet;
- Exhibit 15. Decision No. 253;
- Exhibit 16. Decision no. 253-A;
- Exhibit 17. Decision no. 569;
- Exhibit 18. Site Plan from Rauch Engineering Design & Development Services;

Exhibit 19. Critical Area Commission Letter dated 12/28/2018.

Mr. Jones requested that those who might wish to testify rise and be sworn. All witnesses were sworn. He invited the Applicant to tell the Board about the project.

Jake Laureska of Rauch Inc., 106 N. Harrison Street, Easton, MD 21601 introduced himself. He is acting as the Applicant's agent. Mr. Laureska stated that there has been an existing marina use on this property for about forty (40) years. Currently the property owner operates Ferry Point Marina on the adjoining parcel to the west, Parcel 80. The Applicant stores boats in the water and out of the water on both parcels and has requested this hearing to legitimize on-site boat storage for this parcel, Parcel 43. That use is permitted in the LC district by special exception. *Code* §190-29.22 C. He noted that the Applicant is trying to clean up the properties, and that outdoor boat storage is a necessary adjunct to the marina parcel, Parcel 80. The proposed new boat storage area will allow for more organized boat storage, and will feature new parking areas for business patrons. It will improve the overall appearance of the property as seen by motorists on Route 50. Additional improvements will be made to structures on both parcels.

Mr. Cavanaugh commented that the ongoing violations mentioned in the letter from the Critical Areas Commission (CAC) are a concern and wished to know how they relate to this parcel and this project.

Mr. Laureska stated that the Applicant is addressing those concerns and is aware that they will have to be resolved with regard to the use on Parcel 80. It has no bearing on Parcel 43.

Mr. Salinas clarified that the Planning Commission will be reviewing the site plan for Parcel 43, if approved, and that the conditions stated in the CAC letter of December 28, 2018 (Exhibit 19) would be attached to site plan approval.

Mr. Dorsey commented that he understood the December 28 letter to be a supplement to the CAC's earlier letter that was included with the staff report.

Mr. Salinas stated that the violations were separate issues, and were for the adjoining Parcel 80. The issue before the Board is the use of Parcel 43.

Mr. Alexis Kramer was in the audience. He commented that he had been involved with the issues spawning the violations and that they concerned a barge moored in state

wetlands. The original violations had been appealed, and as a result of the decision in that appeal the Applicant had agreed to remove the barge from state wetlands and move it to Parcel 80 (or, in the alternative, to prove that it was a vessel). He stated that there was no specified time in which the remedial action was required to occur.

A Board member opined that there were a large number of boats stored on Parcel 43 in the photograph, Exhibit 13, and wondered if the requested special exception would provide room for adequate storage for all of them.

Mr. Lareska explained that if there were too many to store on Parcel 43, the Applicant would have to work out an arrangement to accommodate the boat owners on an adjoining parcel.

Mr. Jones asked if both parcels were used in the marina business. He was concerned that an approval might be construed as approving the existing uses on Parcel 80. The Applicant stated that both parcels were used in the marina business, but that the use proposed for Parcel 43 had nothing to do with the uses on Parcel 80. He added that the issues on Parcel 80 concerned a barge that was docked along the bulkhead on the Parcel 80. That use is currently not permitted by the *Code* or state regulation. The County and the Maryland Department of the Environment (MDE) required that the barge be removed. The Applicant appealed. The case was heard by an administrative law judge, and as a result of the appeal the Applicant is required to remove the barge or have it classified as a vessel by the Coast Guard. The Applicant is pursuing that classification. Meanwhile, the County and MDE are working with the Applicant to see if the barge could be moved on shore. The matter is still in litigation, however, there is no contention that the use requested for this parcel (Parcel 43) is improper in any way.

Mr. Salinas pointed out that the staff report recommended approval of the requested use on Parcel 43. He explained that each parcel might have a separate use for zoning purposes.

Mr. Lareska agreed, stating that the application was for Parcel 43 only, and that this application had nothing to do with the barge and Parcel 80's land use issues. The application is for a boat storage use only.

Mr. Cavanaugh asked if people would be working on the boats while they were stored.

Ms. Cheryl Hughes, one of the LLC members, explained that there were areas in the marina where owners could work on their boats, but the boats are very close to each other while in outdoor storage, so it was not anticipated that anyone would be working on them while they were in the proposed outdoor storage area.

Mr. Shortall opined that there are currently boats everywhere on the property and wanted to know if they will all fit.

Ms. Hughes stated that there are other boat storage areas in the marina as well.

The Board members had no additional factual questions. Mr. Sewell stated he would like to meet with Counsel in executive session to discuss some concerns he had. Mr. Jones inquired if that request was a motion to go into executive session to receive advice of counsel. Mr. Sewell stated that it was his intention that it be a motion. Mr. Dorsey seconded the motion, which carried 5-0. The Board left the room to go into executive session at 7:00 p.m.

The Board resumed open session at 7:20 p.m. Counsel informed the public that the session had been closed so that the Board could receive advice of counsel. Mr. Cavanaugh asked if the Applicant wished to have its written answers to the warrants considered in addition to the verbal testimony presented and received an affirmative response.

Mr. Jones suggested that the Board's decision might well turn on the issue of common ownership and use. He inquired if the parcels had always been used as a unit and received an affirmative response. However, the Applicant reiterated that it was seeking this approval for Parcel 43 only, and that, if approved, the outdoor boat storage on Parcel 43 would be used in conjunction with the permitted uses on the remaining marina property.

Mr. Jones then asked the Board members for their thoughts.

Mr. Cavanaugh stated that the Applicant needed winter outdoor boat storage, and that the use was appropriate for Parcel 43. He added that the Applicant has done a lot to improve the site and make it neater and more organized.

Mr. Dorsey had been concerned that the use of both parcels was that of a marina – they were historically used that way, they have had the same owner and are operated by the same business. If that were the case, he believed the violations would prevent

approval. He recognized that the owner's agent had testified that the application to be considered was only for Parcel 43, and, for that reason he would vote to approve the application.

Mr. Jones felt that the owner was making a choice to treat the two parcels as distinct and separate entities although they were occupied by one business. He felt the Applicant had made it clear that it was applying an approval for Parcel 43 only, and that the approval of that use would not violate the *Code* or the county's Critical Area Program.

Mr. Shortall agreed that the evidence presented is for Parcel 43 only, and is separate and distinct from whatever uses exist on Parcel 80. Boat storage is a use permitted by special exception in the district.

Mr. Sewell concurred with the other Board members.

Mr. Jones added that since the application was being approved for Parcel 43 only, the Board would add the two conditions requested by the CAC in the December 28, 2018 letter, but would modify the second condition to add that a modification of the special exception would also be required.

There being no other public comment, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted a written application for a special exception.
2. The public hearing was properly advertised and posted, and the adjacent land owners were properly notified. Exhibits 3, 4, 5 and 9.
3. The Applicant has received favorable recommendation from Staff for the reasons documented in exhibit 7, the Planning Staff Report authored by Ms. Deflaux.
4. The Planning Commission unanimously has approved the proposed project Exhibit 8.
5. The proposed re-development will continue the maritime use established in this parcel some forty (40) years ago. The Planning Commission, guardian of the county's Comprehensive Plan, unanimously approved the requested special exception. Both Chapter Two (2) and Chapter Seven (7) of the *Talbot County Comprehensive Plan* encourage redevelopment of existing commercial uses that have become functionally obsolete.

6. The vehicle parking and boat parking/storage are permitted used in the LC district.
7. Similar uses exist on the adjacent properties located to the north and west of the subject parcel. Allowing additional boat storage on the subject parcel is compatible with existing uses.
8. The proposed use will not be detrimental to the surrounding properties. The proposed use will not produce noise, glare or other adverse effects on adjoining properties.
9. No public facilities will be adversely affected.
10. As the proposed use is storage of boats, there will be a minimal impact on pedestrian, vehicular or marine traffic.
11. There should be no overall impact on traffic. Marina Drive servicing the property has direct access to Route 50., the County's major arterial highway.
12. Site plan review will address any off street parking concerns. Having designated parking and storage areas will enable the Applicant to better organize the use of the area.
13. Wildlife and aquatic habitat will be improved by a new stormwater management design and buffer enhancements along Route 50 and the Choptank River.
14. The property does not adjoin any agricultural areas and is located in an area that has been designated as an intensely developed area (IDA) for critical area development.

For the reasons set out in the Board's findings, Mr. Jones made a motion that the special exception permitting outdoor boat storage on Parcel 43 be approved subject to the following conditions:

A. The Applicant shall take all required steps and acquire all necessary approvals, including any additional waivers necessary, required for a Major Site Plan and Landscaping Plan as required by the *Code*.

B. Until the Applicant has fulfilled all of the requirements in the Natural Resources Article § 8-1808 (c)(15)(G)4, the Applicant is prohibited from using Parcel 43 to serve any nonwater-dependent structure located adjacent to Parcel 80 while that structure is located in State wetlands. Servicing the nonwater-dependent structure in State wetlands includes providing water, electricity or parking on Parcel 43 for the benefit of the nonwater-dependent structures on the adjoining parcel; constructing additional

structures for water, electricity or parking on Parcel 43 that could be used to service the nonwater-dependent structure located adjacent to Parcel 80; or providing any other infrastructure necessary for the construction of the nonwater-dependent structure or the use of the nonwater-dependent structure by the public.

C. If, at any time in the future the Applicant proposes a use on Parcel 43 that will service the nonwater-dependent structure while it is located in State wetlands, a new site plan demonstrating that proposed use shall be required, and a modification of this special exception shall also be required.

Mr. Dorsey seconded the motion. There was no further discussion on the motion. The Chairman called for a vote. The motion passed, 5-0 with all members voting to grant the variances requested.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,
BY THE TALBOT COUNTY BOARD OF APPEALS,


RESOLVED, that the Applicant, **LS FUTURES, LLC.**, (Appeal No. 18-1689) is **GRANTED** the requested Special Exception to permit outdoor boat storage on Parcel 43 consistent with the evidence presented to the Board of Appeals, and subject to the aforementioned conditions, by vote as previously noted.

GIVEN OVER OUR HANDS, this 19th day of February, 2019

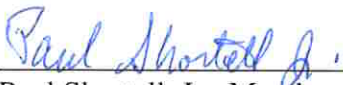
TALBOT COUNTY BOARD OF APPEALS



Phillip Jones., Chairman




Frank Cavanaugh, Vice Chairman



Paul Shortall, Jr., Member



John Sewell, Member



Louis Dorsey, Jr., Member